



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

SOUTH TEXAS HEALTH SYSTEM  
3255 WEST PIONEER PARKWAY  
ARLINGTON TX 76013

#### **Respondent Name**

INDEMNITY INSURANCE CO OF NORTH AMERICA

#### **Carrier's Austin Representative Box**

Box Number 15

#### **MFDR Tracking Number**

M4-13-2927-01

#### **MFDR Date Received**

JULY 2, 2013

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "Since TDI moved to a 143% of DRG for inpatient services on 3/1/08 for hospital claims, we have reviewed the Medicare allowance and decided the insurance reimbursement does not meet this criteria. Medicare would have allowed this facility \$8,578.81 for DRG 491. The correct allowable is \$12,267.70, which is 143%-over-Medicare. After their payment of \$11,805.81, a supplemental payment of \$461.89 is due"

**Amount in Dispute:** \$461.89

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "Per our Fee Schedule team, no additional monies are due to the provider. Our Fee Schedule team advised the provider is requesting reimbursement based off the calculations using the Medicare PC Pricer...includes commonly referred to as 'pass through'. The pass through amount is an estimate of Medicare bad debts, organ acquisition costs, and graduate medical education expenses for those hospitals that want to project the pass through costs in the PC Pricer system represents Medicare patient costs, not costs associated with a workers' compensation claim."

**Response Submitted by:** Flahive, Ogden & Latson

### **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
December 31, 2012 Through January 05, 2013	Inpatient Hospital Surgical Services	\$461.89	\$461.89

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving a medical fee dispute.
2. 28 Texas Administrative Code §134.404 sets out the guidelines for reimbursement of hospital facility fees for inpatient services.

3. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits

- BL-This bill is a reconsideration of a previously reviewed bill. Allowance amounts do not reflect previous payments.
- BL-To avoid duplicate bill denial, for all recon/adjustments/additional pymnt requests, submit a copy of this EOR or clear notation that a recon is requested.
- W1-Workers compensation state fee schedule adjustment.
- W1-This line was included in the reconsideration of this previously reviewed bill.

### **Issues**

1. Were the disputed services subject to a specific fee schedule set in a contract between the parties that complies with the requirements of Labor Code §413.011?
2. Which reimbursement calculation applies to the services in dispute?
3. What is the maximum allowable reimbursement for the services in dispute?
4. Is the requestor entitled to additional reimbursement for the disputed services?

### **Findings**

1. 28 Texas Administrative Code §134.404(e) states that: "Except as provided in subsection (h) of this section, regardless of billed amount, reimbursement shall be:  
(1) the amount for the service that is included in a specific fee schedule set in a contract that complies with the requirements of Labor Code §413.011; or  
(2) if no contracted fee schedule exists that complies with Labor Code §413.011, the maximum allowable reimbursement (MAR) amount under subsection (f) of this section, including any applicable outlier payment amounts and reimbursement for implantables."

No documentation was found to support the existence of a contractual agreement between the parties to this dispute; therefore the MAR can be established under §134.404(f).

2. §134.404(f) states that "The reimbursement calculation used for establishing the MAR shall be the Medicare facility specific amount, including outlier payment amounts, determined by applying the most recently adopted and effective Medicare Inpatient Prospective Payment System (IPPS) reimbursement formula and factors as published annually in the Federal Register. The following minimal modifications shall be applied.  
(1) The sum of the Medicare facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by:  
(A) 143 percent; unless  
(B) a facility or surgical implant provider requests separate reimbursement in accordance with subsection (g) of this section, in which case the facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by 108 percent."

No documentation was found to support that the facility requested separate reimbursement for implantables; for that reason the MAR is calculated according to §134.404(f)(1)(A).

3. §134.404(f)(1)(A) establishes MAR by multiplying the most recently adopted and effective Medicare Inpatient Prospective Payment System (IPPS) reimbursement formula and factors (including outliers) by 143%. Information regarding the calculation of Medicare IPPS payment rates may be found at <http://www.cms.gov>. Documentation found supports that the DRG assigned to the services in dispute is 491, and that the services were provided at South Texas Health System.

The respondent states in the position summary that "Per our Fee Schedule team, no additional monies are due to the provider. Our Fee Schedule team advised the provider is requesting reimbursement based off the calculations using the Medicare PC Pricer...includes commonly referred to as 'pass through'. The pass through amount is an estimate of Medicare bad debts, organ acquisition costs, and graduate medical education expenses for those hospitals that want to project the pass through costs in the PC Pricer system represents Medicare patient costs, not costs associated with a workers' compensation claim."

28 Texas Administrative Code §134.404(f) provides, in pertinent part, that "The reimbursement calculation used for establishing the MAR shall be the Medicare facility specific amount, including outlier payment amounts, determined by applying the most recently adopted and effective Medicare Inpatient Prospective Payment System (IPPS) reimbursement formula and factors as published annually in the Federal Register" with minimal modification as specified in the rule. Contrary to the respondent's position, the Division notes that the Rule Adoption Order does not specify that pass-through reimbursements are excluded from payment rule, only that the Labor Code does not provide for pass-through reimbursements to cover bad debt or direct medical education. The Division clarified elsewhere in the preamble that "Bad debt and direct medical

education are paid outside the base methodology and are a part of the cost report reconciliation process, which the Division has not adopted” (33 Texas Register 419). In each instance the Division is referring to a process, cost report reconciliation, that was not adopted and accordingly not mentioned in the text of the rule. The respondent has not supported the argument that pass-through amounts are to be excluded from CMS’s base methodology, or from the calculation of the Medicare facility specific amount.

Consideration of the DRG, location of the services, and bill-specific information results in a total Medicare facility specific allowable amount of \$8,874.43. This amount multiplied by 143% results in a MAR of \$12,690.43.

4. The division concludes that the total allowable reimbursement for the services in dispute is \$12,690.43. The respondent issued payment in the amount of \$11,805.81. The difference between the total allowable and amount paid is \$884.62. The requestor is seeking additional reimbursement in the amount of \$461.89. Based upon the documentation submitted additional reimbursement of \$461.89 is recommended.

### **Conclusion**

For the reasons stated above, the division finds that the requestor has established that additional reimbursement is due.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$461.89 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

_____	_____	11/06/2013
Signature	Medical Fee Dispute Resolution Officer	Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, 37 Texas Register 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**